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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,886	04/05/2001	Rinko Katsuda	AA352F	7733

27752 7590 08/20/2003

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9
EXAMINER

DOUYON, LORNA M

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 08/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/806,886	Applicant(s) KATSUDA ET AL
	Examiner Lorna M. Douyon	Art Unit 1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2003 and 01 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-7 and 9-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7 and 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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1. This action is responsive to the amendment filed on May 1, 2003.
2. The cancellation of claims 3, 4, 8 and 12 is acknowledged. Claims 1, 2, 5-7 and 9-11 are pending.
3. The rejection of claims 1-12 under 35 U.S.C. 112, second paragraph is withdrawn in view of applicants' amendment.
4. -The rejection of claims 1-7, 9, 11 and 12 under 35 U.S.C. 102(b) as being anticipated by Akay et al. (WO 93/01269), hereinafter "Akay" is withdrawn in view of applicants' amendment.
5. The rejection of claims 1-6, 9-11 under 35 U.S.C. 102(b) as being anticipated by Steventon (WO 97/17939) is withdrawn in view of applicants' amendment.
6. Claims 1-2, 5-6, 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steventon for the reasons set forth in the office action in paper number 4.
7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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8. Claims 1-2, 5-7, and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akay in view of EP 0,382,464, hereinafter "EP '464.

Akay teaches antifoam particles comprising silicone antifoam (X2-3302) on a cellulose carrier (Avicel PH101, particle size = 50 μm) coated with citric acid, sodium carbonate and PEG (see Example 6C under Table 5 on page 32). See also Example 7 on pages 33-34. Akay also teaches that the method of producing the antifoam is described in EP-A-382 464 the disclosure of which is incorporated herein by reference (see page 11, line 20 to page 12, line 4). The antifoam particles will normally be admixed into a detergent product which includes detergent active and detergency builder (see page 14, lines 1-12). Akay also teaches the use of the detergent product in washing machines (see page 1, lines 10-11). Akay, however, fails to disclose the antifoam being in the form of irregularly shaped flakes having a minimum dimension of not less than about 0.05 cm (500 μm) and a maximum dimension at least about 20% greater than the minimum dimension.

EP '464 teaches a method of encapsulating particles wherein the resulting product have an average size of 771 μm to 1598 μm (see Table 6 on page 18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the antifoam particles the have a particle size within those recited because Akay teaches that the method of producing the antifoam particles is described in EP '464 and EP '464 teaches that the product resulting from the process produces particles having an average size of 771 μm to 1598 μm . With regards to the flake form, even though Akay does not

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explicitly disclose this shape, a change in form or shape is within the level of ordinary skill in the art, see *In re Dailey*, 149 USPQ 47 (CCPA 1976).

Response to Applicants' Arguments

9. Applicants' arguments filed April 1, 2003 have been fully considered but they are not persuasive.

With respect to Steventon, Applicants argue that Steventon appears to recite granular particles and that this reference fails to disclose the irregular dimensions of flakes recited in the present claims.

The Examiner respectfully disagrees with the above argument because even though Steventon does not explicitly disclose the irregular dimensions of flakes, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the spray-dried granules of Steventon having an average particle size in the range from about 20 μm to about 500 μm to have irregular shapes because it is the nature of spray drying process to produce products having irregular shapes. With regards to the flake form, even though Steventon does not explicitly disclose this shape, a change in form or shape is within the level of ordinary skill in the art, see *In re Dailey*, 149 USPQ 47 (CCPA 1976).

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10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

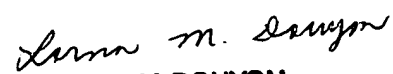
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (703) 305-3773. The examiner can normally be reached on Mondays-Fridays from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for this Technology Center is:

(703) 872-9311 - for Official After Final faxes
(703) 872-9310- for all other Official faxes.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center receptionist whose telephone number is (703) 308-0661.


LORNA M. DOUYON
PRIMARY EXAMINER